

428 U.S. 153, 181-188, 49 L.Ed.2d 859,  
96 S.Ct. 2909 (opinion of Stewart, Powell  
and Stevens, JJ.); see id., at 231-241  
(Marshall, J., dissenting); Furman v. Georgia,  
408 U.S. at 286-291, 33 L.Ed.2d 346, 92 S.Ct.  
2726 (Brennan, J., concurring), 306-310, 33  
L.Ed.2d 346, 92 S.Ct. 2726 (Stewart, J.,  
concurring); see id., at 314-371, 33 L.Ed.2d  
346, 92 S.Ct. 2726 (Marshall, J., concurring).  
From the point of view of the defendant, it is  
different in both its severity and its  
finalty. From the point of society, the action  
of the

(430 U.S. 358)

sovereign in taking the life of one of its  
citizens also differs dramatically from any  
other legitimate state action. It is of vital  
importance to the defendant and to the  
community that any decision to impose the  
death sentence be, and appear to be, based  
on reason rather than caprice or emotion.

The Petitioner respectfully implores this Honorable  
Court to take the above cited language from Gardner, supra,  
into account and to give it ample and weighty consideration  
in its decision on the legal propriety of the Georgia Supreme  
Court's affirmance of the death penalty in Petitioner's case.

#### CONCLUSION

For the within and foregoing reasons, a Writ of  
Certiorari should issue to review the judgment and opinion of  
the Georgia Supreme Court in its denial of the Petitioner's

Application for a Certificate of Probable Cause to appeal the  
dismissal of his habeas corpus action by the trial court in  
Butts County, Georgia.

Respectfully submitted,

MARTIN and YOUNG

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IN THE SUPREME COURT  
OF THE UNITED STATES

82-5354

TONY B. AMADEO,

Petitioner,

v.

ROBERT O. FRANCIS, WARDEN,  
GEORGIA DIAGNOSTIC AND  
CLASSIFICATION CENTER,

Respondent.

CASE NO. \_\_\_\_\_

RECEIVED

SEP 6 1983

Office of The Clerk  
SUPREME COURT, U.S.

MOTION FOR LEAVE TO  
PROCEED IN FORMA PAUPERIS

The Petitioner, TONY B. AMADEO, who is now confined to the Georgia Diagnostic and Classification Center, a state prison located in Jackson, Georgia, and who is under a sentence of death, asks leave to file the attached Petition for a Writ of Certiorari to the United States Supreme Court without prepayment of costs and proceed in forma pauperis pursuant to Rule 53.

The Petitioner's Affidavit in support of this motion is attached hereto.

MARTIN and YOUNG

BY: John R. Martin

JOHN R. MARTIN

504 The Grant Building  
44 Broad Street, N.W.  
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IN THE SUPREME COURT  
FOR THE UNITED STATES

TONY B. AMADEO,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

\*  
\*  
\*  
\*  
\*  
\*  
\*

CASE NUMBER \_\_\_\_\_

PAUPER'S AFFIDAVIT

TONY B. AMADEO, Petitioner, being duly sworn, deposes and says:

(1) I am a citizen of the United States and the Petitioner in the above-entitled action.

(2) I desire to prosecute a review of the judgment entered by the Supreme Court of the State of Georgia on June 21, 1983, and affirmed on rehearing on July 7, 1983, pursuant to 28 U.S.C. §1257(3), but because of my poverty, I am unable to pay the costs of such a review.

(3) I believe I am entitled to the redress I seek by such a review, and that such a review presents substantial issues of deprivation of rights secured by the Constitution of the United States.

The nature of the question to be presented upon such a review is as follows:

WHETHER THE PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED TO HIM BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION IN THAT THE PETITIONER'S TRIAL COUNSEL FAILED TO CHALLENGE THE GRAND AND PETIT JURY COMPOSITION PRIOR TO THE TRIAL OF THE PETITIONER IN PUTNAM COUNTY, GEORGIA.

I contend that the Supreme Court of Georgia erred in upholding my conviction and sentence.

WHEREFORE, Affiant prays that he may have leave to proceed in this Court on Petition for Writ of Certiorari in forma pauperis.

Tony B. Amadeo  
TONY B. AMADEO

Sworn to and subscribed before  
me this 31 day of August,  
1983.

Allen W. Kiger  
Notary Public  
My Commission Expires  
9-20-83



Application No. 2464

**SUPREME COURT OF GEORGIA**

ATLANTA, June 21, 1983

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

TONY B. AMADEO V. ROBERT O. FRANCIS, WARDEN

Upon consideration of the application for a certificate of probable cause to appeal filed in this case, it is ordered that it be hereby denied.

**SUPREME COURT OF THE STATE OF GEORGIA.**

CLERK'S OFFICE, ATLANTA.

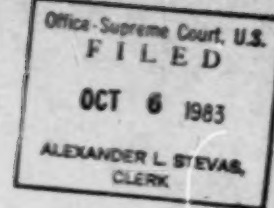
I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*Yvonne B. Williams* Clerk

**APPENDIX A**

NO. 83-5354



IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

TONY B. AMADEO,

Petitioner,

v.

ROBERT O. FRANCIS, WARDEN,  
GEORGIA DIAGNOSTIC AND  
CLASSIFICATION CENTER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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Attorney General

QUESTION PRESENTED

Whether Petitioner waived his right under state law to raise the issue of alleged ineffective assistance of counsel for the failure of his trial attorney to challenge the composition of the grand and traverse juries prior to trial?



## TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED. . . . .	i
STATEMENT OF FACTS. . . . .	1
REASONS FOR NOT GRANTING THE WRIT	
THE SUPREME COURT OF GEORGIA PROPERLY REFUSED TO REVIEW THE QUESTION RAISED BY PETITIONER ON AN ADEQUATE AND INDEPENDENT STATE GROUND. . . . .	5
CONCLUSION. . . . .	9
CERTIFICATE OF SERVICE. . . . .	10

## TABLE OF AUTHORITIES

### Cases Cited:

	<u>Page</u>
<u>Amadeo v. State</u> , 243 Ga. 627, 256 S.E.2d 382 (1979). . . . .	2,6
<u>Dix v. State</u> , 249 Ga. 810 294 S.E.2d 527 (1982). . . . .	3,5,7
<u>Durley v. Mayo</u> , 351 U.S. 277 (1956). . . . .	7
<u>Henry v. Mississippi</u> , 379 U.S. 443 (1965). . . . .	8
<u>Herb v. Pitcairn</u> , 324 U.S. 117 (1945). . . . .	8
<u>Smith v. Zant</u> , 250 Ga. 645, 301 S.E.2d 32 (1983). . . . .	6
<u>Stembridge v. Georgia</u> , 343 U.S. 541 (1952). . . . .	7

### Statutes Cited:

28 U.S.C. § 2254. . . . .	2
O.C.G.A. § 9-14-51. . . . .	3,5,7

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NO. 83-5354

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IN THE  
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TONY B. AMADEO,

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ROBERT O. FRANCIS, WARDEN,  
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---

ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF GEORGIA

---

BRIEF FOR THE RESPONDENT IN OPPOSITION

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PART ONE

STATEMENT OF FACTS

Petitioner, Tony B. Amadeo, was tried and convicted for the offense of murder and criminal attempt to commit theft in the Superior Court of Putnam County on November 30, 1977. Petitioner received the death penalty for the offense of murder and a ten year sentence for the offense of criminal attempt to commit theft. A motion for new trial filed on Petitioner's behalf on December 21, 1977, was overruled by the Superior Court of Putnam County, Georgia on September 18, 1978.

Petitioner appealed to the Supreme Court of Georgia which affirmed his convictions and sentences in Amadeo v. State, 243 Ga. 627, 256 S.E.2d 382 (1979). A motion for rehearing filed in the Supreme Court of Georgia on behalf of the Petitioner was denied on May 29, 1979. A petition for a writ of certiorari to this Court was denied on November 26, 1979, with the petition for rehearing being denied by this Court on January 21, 1980.

Following the denial of his petition for a writ of certiorari by this Court, Petitioner filed a petition for a writ of habeas corpus in the Superior Court of Putnam County, Georgia on January 30, 1980. Petitioner was denied relief by that court on February 29, 1980. Petitioner filed an application for a certificate of probable cause to appeal to the Supreme Court of Georgia which application was denied on September 10, 1980. A motion for rehearing was denied by the Supreme Court of Georgia on September 24, 1980. A petition for a writ of certiorari to this Court was denied on March 30, 1981, with a motion for rehearing being denied on May 18, 1981.

Next, Petitioner filed an application for federal habeas corpus relief pursuant to 28 U.S.C. § 2254 in the United States District Court for the Middle District of Georgia, Macon Division on June 8, 1981. On September 22, 1982, the district court dismissed the application for federal habeas corpus relief without prejudice for failure to exhaust state remedies with respect to the claim now raised in this petition for a writ of certiorari. The court stated:

While this petitioner has previously asserted to the courts of this State upon appeal and by a state habeas corpus petition that the grand and petit jury lists were unconstitutionally composed,

the petitioner has not claimed in any state court proceeding the denial of the effective assistance of counsel guaranteed to him by the Sixth and Fourteenth Amendments to the Constitution of the United States. (cites omitted).

(Appendix A, p. 2).

Petitioner then filed a second petition for a writ of habeas corpus in the Superior Court of Butts County, Georgia on October 25, 1982, alleging that his trial counsel rendered ineffective assistance of counsel so as to violate Petitioner's rights under the Sixth and Fourteenth Amendments to the Constitution of the United States. The ineffective assistance of counsel allegation was that trial counsel had improperly failed to challenge the composition of the grand and petit jury in Putnam County, Georgia. Counsel for Respondent filed a motion to dismiss asserting that this second petition for a writ of habeas corpus was successive under Georgia law as contained in O.C.G.A. § 9-14-51 and under such decisions of the Supreme Court of Georgia as Dix v. Zant, 249 Ga. 810 294 S.E.2d 527 (1982).

A hearing was conducted in the Superior Court of Butts County, Georgia, on the issue of whether this subsequent state habeas corpus petition constituted a successive petition within the meaning of O.C.G.A. § 9-14-51, thereby rendering the allegation raised in the petition as having been waived under state law. The Superior Court of Butts County, Georgia entered an order dated March 16, 1983, determining that this subsequent petition filed on behalf of Petitioner was successive in nature and granted Respondent's motion to dismiss.



Petitioner appealed the judgment of the Superior Court of Butts County, Georgia to the Supreme Court of Georgia by filing an application for a certificate of probable cause to appeal. The application for a certificate of probable cause to appeal was denied by the Supreme Court of Georgia on June 21, 1983 and a motion for reconsideration filed with respect to the application on behalf of the Petitioner was denied on July 7, 1983.

It is from these orders of the Supreme Court of Georgia that Petitioner now seeks review from this Court.